

SECOND REGULAR SESSION

SENATE BILL NO. 1086

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR CIERPIOT.

5273S.01I

ADRIANE D. CROUSE, Secretary

AN ACT

To amend chapter 407, RSMo, by adding thereto two new sections relating to product repair requirements.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto
2 two new sections, to be known as sections 407.652 and 407.653,
3 to read as follows:

407.652. As used in sections 407.652 and 407.653, the
2 **following terms mean:**

3 (1) "Authorized repair provider", an individual who or
4 a business that has an oral or written arrangement for a
5 definite or indefinite period in which a manufacturer or
6 distributor transfers to a separate business organization or
7 individual licensee the right to use a trade name, service
8 mark, or other proprietary identifier for the purposes of
9 offering diagnosis, maintenance, or repair services under
10 the name of the manufacturer. A manufacturer that offers
11 diagnosis, maintenance, or repair services for its product
12 and that does not have an arrangement with an individual or
13 business described in this subdivision shall be considered
14 an authorized repair provider;

15 (2) "Construction machinery", any mobile heavy
16 equipment or heavy machinery designed for construction or
17 earthwork tasks;

(3) "Documentation", manuals, diagrams, reporting output, schematic diagrams, service code descriptions, or other information provided to the authorized repair provider for the purposes of diagnosis, maintenance, repair, or refurbishment;

(4) "Embedded software", programmable instructions provided on firmware delivered with certain products or parts for the purposes of product operation, including all relevant safety, security, and defect patches and fixes made by the manufacturer for this purpose. "Embedded software" shall include all software that meets this definition regardless of name including, but not limited to, assembly code, basic internal operating system, internal operating system, machine code, microcode, and root code;

(5) "Fair and reasonable terms", an equitable price in light of relevant factors including, but not limited to:

(a) The net cost to an authorized repair provider for similar parts, documentation, or tools obtained from manufacturers, less any discounts, rebates, or other incentive programs;

(b) The cost to the manufacturer for preparing and distributing the parts or product, excluding any research and development costs incurred in designing and implementing, upgrading, or altering the product, but including amortized capital costs for the preparation and distribution of the parts; and

(c) The price charged by other manufacturers for similar parts or products.

For documentation including, but not limited to, software updates, "fair and reasonable terms" shall mean at no charge, except if documentation is requested in printed

49 form, the manufacturer may charge for reasonable costs of
50 preparing and sending the documentation. For software
51 tools, "fair and reasonable terms" shall mean at no charge
52 and without requiring authorization, without requiring
53 internet access, and without impeding access or use of the
54 product;

55 (6) "Farm machinery", any mobile equipment or
56 machinery including, but not limited to, tractors, trailers,
57 combines, tillage implements, balers, unmanned aircraft
58 systems, off-road vehicles, and other equipment, including
59 attachments and repair parts thereof, used in the planting,
60 cultivating, irrigating, harvesting, or ranching of
61 agricultural products, excluding self-propelled machines
62 designed primarily for the transportation of persons or
63 property on a street or highway;

64 (7) "Forestry machinery", any mobile equipment or
65 machinery including, but not limited to, skidders,
66 delimbers, log loaders, and other equipment, including
67 attachments and repair parts thereof, used in a forest for
68 logging and other forestry purposes;

69 (8) "Independent repair provider", an individual or
70 business operating in the state that is not affiliated with
71 a manufacturer or a manufacturer's authorized dealer of a
72 product but is engaged in the diagnosis, service,
73 maintenance, or repair of products. A manufacturer's
74 authorized dealer shall be considered an independent repair
75 provider if the dealer engages in the diagnosis, service,
76 maintenance, or repair of a product that is not affiliated
77 with the manufacturer;

78 (9) "Manufacturer", an individual who or a business
79 that, in the ordinary course of business, is engaged in
80 selling or leasing new products to consumers or other end

81 users and is engaged in the diagnosis, service, maintenance,
82 or repair of that product;

83 (10) "Owner", an individual who or a business that
84 lawfully acquires a product purchased or used in the state;

85 (11) "Product", any farm machinery, construction
86 machinery, or forestry machinery, regardless of the date
87 purchased, whose functioning depends, in whole or in part,
88 on embedded software or attached digital electronics;

89 (12) "Remote diagnostics", a remote data transfer
90 function between certain products and a provider of repair
91 services, including for purposes of remote diagnostics,
92 settings controls, or location identification;

93 (13) "Service parts", replacement parts, either new or
94 used, made available by the manufacturer to the authorized
95 repair provider for the purposes of repair;

96 (14) "Tools", any software program, hardware
97 implement, or other apparatus used for diagnosis,
98 maintenance, or repair of a product including, but not
99 limited to, software or other mechanisms that provision,
100 program, or pair a new part, calibrate functionality, or
101 perform a function required to bring the product back to
102 fully functional condition;

103 (15) "Trade secret", anything tangible, intangible, or
104 electronically stored or kept that constitutes, represents,
105 evidences, or records intellectual property including, but
106 not limited to:

107 (a) Secret or confidentially held designs, processes,
108 procedures, formulas, inventions, or improvements;

109 (b) Secret or confidentially held scientific,
110 technical, merchandising, production, financial, business,
111 or management information; or

112 (c) Any "trade secret" as that term is defined under
113 paragraph (3) of 18 U.S.C. Section 1839.

407.653. 1. Owners of products purchased or used in
2 this state and independent repair providers shall have the
3 right to:

4 (1) Access the same diagnostic and repair information
5 of products manufactured by the manufacturer as the
6 manufacturer makes available to authorized repair
7 providers. Such information shall be provided in the same
8 manner and time as provided to authorized repair providers.
9 Such information shall include, but not be limited to,
10 repair technical updates, diagnostic software, service
11 access passwords, updates and corrections to firmware, and
12 related documentation; and

13 (2) Purchase service parts, documentation, and tools
14 available upon fair and reasonable terms. Such service
15 parts shall be made available in the same manner and time as
16 given to authorized repair providers. Such service parts
17 shall include updates to firmware of parts.

18 Nothing in this section shall require the manufacturer to
19 sell service parts if the service parts are no longer
20 available to the manufacturer or the authorized repair
21 provider of the manufacturer.

22 2. An authorized repair provider shall have the right
23 to purchase diagnostic, service, or repair information of a
24 product in a format standardized with other manufacturers
25 instead of a proprietary format from a manufacturer if the
26 manufacturer sells diagnostic, service, or repair
27 information to independent repair providers or third-party
28 providers in such a standardized format or if the
29 manufacturer offers terms and conditions more favorable to

30 independent repair providers or third-party providers than
31 the manner and the terms and conditions that are available
32 to an authorized repair provider. However, this subsection
33 shall not apply if the proprietary format includes
34 diagnostic, service, repair, or dealership operations
35 information or functionality not available in a standardized
36 format.

37 3. Owners and independent repair providers shall have
38 the right to purchase from manufacturers of products sold or
39 used in this state all diagnostic repair tools,
40 incorporating the same diagnostic repair and remote
41 diagnostic capabilities that the manufacturer makes
42 available to its own repair or engineering staff or any
43 authorized repair providers, on fair and reasonable terms.

44 4. For equipment that contains an electronic security
45 lock or other security-related function, the manufacturer
46 shall make available to owners and independent repair
47 providers, on fair and reasonable terms, any special
48 documentation, tools, and parts needed to disable the lock
49 or function and to reset it when disabled in the course of
50 diagnosis, maintenance, or repair of the equipment. The
51 documentation, tools, and parts may be made available
52 through an appropriate secure system.

53 5. Manufacturers that provide repair information to
54 aftermarket tools, diagnostics, or third-party service
55 information publications and systems have fully satisfied
56 their obligations under this section and thereafter are not
57 responsible for the content and functionality of aftermarket
58 diagnostic tools or service information systems.

59 6. If a manufacturer has made an express warranty with
60 respect to a product and the wholesale price of the
61 equipment is one hundred dollars or more, the manufacturer

62 shall provide the parts, tools, and documentation needed to
63 repair the product during the warranty period at an
64 equitable price, with convenient delivery, and with an
65 enabled functionality, considering:

66 (1) The actual cost to the manufacturer to prepare and
67 distribute the part, tool, or documentation, exclusive of
68 any research and development costs incurred;

69 (2) The ability of owners or independent repair
70 providers to afford the part, tool, or documentation; and

71 (3) The means by which the part, tool, or
72 documentation is distributed.

73 7. Manufacturers of products sold or used in the state
74 for the purposes of providing security-related functions
75 shall not exclude diagnostic, service, or repair information
76 necessary to reset a security-related electronic function
77 from information provided to owners and independent repair
78 providers. If necessary for security purposes,
79 manufacturers shall provide information necessary to reset
80 and unlock system or security-related electronic modules to
81 owners and independent repair providers through an
82 appropriate secure data release system.

83 8. Nothing in this section shall require the
84 manufacturer to divulge a trade secret to an owner or to an
85 independent repair provider, except as necessary to provide
86 documentation, parts, and tools on fair and reasonable terms.

87 9. Notwithstanding any provision of law to the
88 contrary, this section shall not be read, interpreted, or
89 construed to abrogate, interfere with, contradict, or alter
90 the terms of an agreement executed between an authorized
91 repair provider and a manufacturer including, but not
92 limited to, performing warranty or recall repair work by an
93 authorized repair provider on behalf of a manufacturer

94 pursuant to the authorized repair agreement. Except in the
95 case of a dispute arising between a manufacturer and its
96 authorized repair provider related to either party's
97 compliance with an existing repair agreement, an authorized
98 repair provider shall have all the rights and remedies
99 provided in this section.

100 10. This section shall not require manufacturers or
101 authorized repair providers to provide an owner or
102 independent repair provider access to nondiagnostic and
103 nonrepair information provided by a manufacturer to an
104 authorized repair provider under the agreement between the
105 manufacturer and the authorized repair provider.

106 11. (1) An independent repair provider or owner who
107 believes that a manufacturer has failed to provide
108 information including, but not limited to, documentation,
109 updates to firmware, safety and security corrections,
110 diagnostics, documentation, or a tool required by this
111 section shall notify the manufacturer in writing and give
112 the manufacturer thirty days from the date the manufacturer
113 receives the complaint to cure the failure. If the
114 manufacturer cures the complaint within thirty days, damages
115 are limited to actual damages in any subsequent litigation.

116 (2) If the manufacturer fails to respond in a timely
117 manner to the notice described under subdivision (1) of this
118 subsection or if an independent repair provider or an owner
119 is not satisfied with the manufacturer's cure, the
120 independent repair provider or the owner may file a
121 complaint in a court of competent jurisdiction. The
122 complaint shall include:

123 (a) Written information confirming that the
124 complainant attempted to acquire and use, through the then-
125 available standard support function provided by the

126 manufacturer, all relevant diagnostics, tools, service
127 parts, documentation, and updates to embedded software,
128 including communication with customer assistance via the
129 manufacturer's then-standard process, if made available by
130 the manufacturer; and

131 (b) Evidence of manufacturer notification as required
132 in subdivision (1) of this subsection.

133 12. No manufacturer shall be required to provide any
134 information or service parts under subsection 1 of this
135 section if the product for which the information or service
136 parts are sought is under a valid warranty for repair or
137 replacement of the product.

138 13. The attorney general shall have all powers,
139 rights, and duties regarding violations of this section as
140 are provided in sections 407.010 to 407.130, in addition to
141 rulemaking authority under section 407.145.

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